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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,516	10/10/2006	Bodo W. Lambertz	DD-25009	5094
2387	7590	01/24/2008		
Olson & Cepuritis, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606			EXAMINER	
			SOLD, JENA A	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			01/24/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,516

Applicant(s)

LAMBERTZ, BODO W.

Examiner

Jena A. Sold

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/26/07 has been entered.

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Sock having Achilles Tendon Protection

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3-8, 10-15, and 17-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "both the spacer cushion pads and the transition piece extending outwardly from the

outer surface of the sock.” There is insufficient antecedent basis for the limitation “the outer surface of the sock” in the claim because “the outer surface of the sock” refers to an element of the invention that has not been previously introduced. As the sock has not specifically been defined as having an outer surface, the particular characteristics and limitations intended by “the outer surface of a sock” have not been defined. For the purpose of examination an outer surface of a sock is any surface of the sock that is directly exposed to the environment including the surface that faces a wearer’s foot when the sock is worn and the surface that faces a wearer’s shoe when the sock is worn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 6, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Haanen (DE 25 47 809). Haanen discloses an ankle protector sock for football players comprising cylindrical cushions 2, 3, present applicant's spacer cushion pads, which lie between the ankle bone and the Achilles tendon on both sides, as visible in Figures 3 and 4 (page 3, para. 1). Hanaan additionally discloses cushion pads 2, 3 are connected by a bridge piece, present applicant's transition piece, made of elastic material (page 3, para. 2 and 3). Especially visible in Figures 4 and 5, cushions

2, 3 are a different shape and thickness than the bridge piece and are, thus, constructed and arranged to stand out distinctly relative to said bridge piece. Also visible in Figure 4, cushion pads 2, 3 and bridge piece extend outwardly from an outer surface of the sock, as defined in paragraph 3 above.

5. Regarding claim 3, as visible in Figures 3 and 4, bridge piece 6 is a cushion pad having a smaller thickness than the spacer cushion pads.

6. Regarding claims 6, 11, and 12, cushion pads 2,3 are conformed to fit between the ankle bone and the Achilles tendon and the height is such to embrace the Achilles tendon (page 3, para. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4-5, 7, 8, 10, 13-15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haanen (DE 25 47 809) in view of Lambertz (U.S. 6286151). Haanen discloses the invention substantially as claimed and as previously discussed including a sock having cylindrical cushions on either side of the Achilles tendon, as well as a transition piece comprising a cushion having a smaller thickness than said cylindrical cushions. Haanen, however, fails to disclose any additional features of the sock or the padding.

8. Regarding claims 4 and 5, Haanen fails to disclose the transition or bridge cushion comprising climate-adjusting fabric. Lambertz teaches a heat-regulating sock for use during sport activities comprising, in part, a padded cushion 7 over the Achilles tendon, wherein said padded cushion comprises climate-adjusting fabric (column 2, lines 42-46). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the bridge piece of Haanen, the portion covering the Achilles tendon, from climate-adjusting fabric, as taught by Lambertz, because climate-adjusting fabric serves to air the skin and transport moisture of the sweat away (column 1, lines 43-45).

9. Regarding claims 7 and 14, Haanen discloses pads 2, 3 may comprise a plastic material, but fails to explicitly disclose said pads comprising internally hollow fibers, surrounded by wool or cotton. Lambertz discloses the sock paddings consisting of hollow-core fibers coated with threads of wool or cotton. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the pads of Haanen out of a plastic material having internally hollow fibers and surrounded by wool or cotton, because hollow-core plastic threads are particularly effective in damping shocks and pressure (column 3, lines 18-22).

10. Regarding claims 8, 15 and 19, Haanen fails to disclose the sock provided with additional cushion pads. Lambertz discloses padded instep cushion 5 and padded shin cushion 6 (column 2, lines 34-38). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide the sports sock of Haanen with additional padded cushions, as taught by Lambertz, because the additional

cushioning protects the shin area during sport activities and reduces stresses and pressure points on the foot (column 1, lines 40-42).

11. Regarding claim 13, as previously discussed, cushion pads 2,3 are conformed to fit between the ankle bone and the Achilles tendon and the height is such to embrace the Achilles tendon (page 3, para. 1), thus adjusted to the anatomical shape of the foot in the area of the Achilles tendon.

12. Regarding claims 17-18, Haanen additionally fails to disclose said sports sock having an air channel. Lambertz teaches said heat-regulating sock for use during sport activities comprising at least 1 integrated airway 3 extending from the sole 2 to the top of the sock, wherein the airway 3 consists of climate-regulating netted fabric (Abstract). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide the sports sock of Haanen with climate-regulating netted fabric forming an air channel in said sock, as taught by Lambertz, because through said air channel, moisture is drawn upward from the area of the sole of the foot, thus cooling the foot and keeping the foot dry (column 2, lines 30-31).

Response to Arguments

13. Applicant's arguments with respect to Etienne have been considered but are moot in view of the present rejection.

14. Applicant's arguments filed 11/20/07 with respect to Haanen have been fully considered but they are not persuasive. As discussed in paragraph 3 above, applicant fails to provide antecedent basis for the limitation "the outer surface of the sock." As a

sock has a plurality of outer surfaces – surfaces that face the outward environment – any of these surfaces meet the above limitation as the particular outer surface to which the applicant refers has not been defined. Thus, the cylindrical cushions 2, 3 and bridge piece of Haanen, extending outwardly from an outer surface of the sock, as visible in Figure 4, satisfy the aforementioned claim limitation.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is cited on form 892 enclosed herewith.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jena A. Sold whose telephone number is (571) 272-8610. The examiner can normally be reached on Mon. - Fri. 9:00 A.M. to 5:00 P.M.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765